

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Eastern Montana Industries (CONTRACTOR)** enter into this Contract (08-011-PHYCF) in accordance with the terms and conditions of limited solicitation #LS-07-020-PHYCF. The parties names, addresses, and telephone numbers (Contractor only) are as follows:

Montana Department of Corrections
Pine Hills Youth Correctional Facility (PHYCF)
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

*Eastern Montana Industries
PO Box 759*

*Miles City, Montana 59301
(406) 234-3740*

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

CONTRACTOR agrees to provide the following cleaning services every Monday and Thursday, starting after 5:00 p.m., or at a mutually agreed upon time. The DEPARTMENT agrees to furnish all necessary cleaning supplies and equipment to accomplish the duties described herein. Each cleaning will consist of first sweeping, then mopping tile floors, emptying waste receptacles, dusting, vacuuming carpeted areas, clean and disinfect bathrooms and toilets, and washing interior glass, as necessary.

2.1 FLOOR SWEEPING

A satisfactory or acceptably swept floor will not have dust streaks, marks, dirt in corners, below radiators, behind doors, or under furniture and equipment. Furniture or other equipment moved during sweeping will be replaced. Wall bases, equipment doors, and furniture will not be disfigured by sweeping mop or broom. After sweeping, the room will appear orderly and well attended. Do not use oil-emulsion, an oil base, or a treated mop.

2.2 DAMP FLOOR MOPPING

Floors will be mopped to remove dirt that remains on the floor surface that could not be removed by sweeping or dry cleaning. A satisfactory or acceptably damp mopped floor presents a clean appearance and is free from streaks, smears, dirt residue, heel and shoe marks, and water. Damp mopping is accomplished by the use of cotton mops, detergent solution and clean water. Application of free water sufficient to stand on the floor or seep into flooring joints will not be acceptable.

2.3 DUSTING

A satisfactory or acceptably dusted surface is free of all dust, dust streaks, lint, cobwebs, dirt and oily streaks or stains from contact with oily dusters. The dust must be removed completely.

- a. Typewriters and other business machines, electronic cabinets, consoles, plotting boards, and equipment of a similar nature will not be dusted. Low and high dusting shall include but not be limited to horizontal and vertical cleaning of files, cabinets, fixtures, and similar equipment, windows, doors, overhead pipe, exposed ducts, ceilings and walls.

- b. Dusting of heating and air conditioning equipment shall include exterior portions of unit heaters, air conditioners, and heating and air conditioning grills.

2.4 PLUMBING, KITCHEN AND REST ROOM FIXTURES AND DRINKING FOUNTAINS

Acceptably cleaned toilets, room fixtures, and rooms have no objectionable odors. Wash bowls, bath tubs, showers, toilet bowls and urinals will be clean, bright, without soap films, scratches, corrosion and incrustation; edges, crevices, traps, holes and rims will be clean. Soap dispensers will be filled and maintained in working condition. There will be no markings on walls, cabinets, tops, hardware and fixtures. Floor, wainscoting and partitions will be clean and bright. All metal fixtures and other hardware and adjacent surfaces will be clean and bright. CONTRACTOR shall not use acids, strong alkaline or metal cleaning utensils on any porcelain surfaces. Care shall be taken to prevent entrance of cleaning solution or water between fixture and the wall during cleaning. Disinfectants will be used on toilet bowls, floors, partitions and other fixtures.

2.5 GLASS CLEANING

Glass is acceptably or satisfactorily cleaned when the glass surface is without spots, streaks, film, water deposits or stains and has a uniformly bright appearance with all adjacent surfaces wiped clean and dry.

All glass includes mirrors and interior window glass.

2.6 WASTE RECEPTACLES

Waste receptacles, consist of waste paper baskets, refuse containers, etc. All containers shall be emptied daily with trash and paper removed from the building and deposited in the collection facilities provided. All waste receptacles will be free from deposits, dirt, streaks and odors. Liners are required in all waste receptacles and shall be changed as often as necessary in order to maintain a clean and sanitary condition. The DEPARTMENT will supply waste receptacle liner supplies.

2.7 EQUIPMENT AND SUPPLY STORAGE

The CONTRACTOR will be responsible for the safety, orderliness and cleanliness of the storage area.

2.8 DAMAGES TO FINISHES AND APPURTENANCES

Building finishes or appurtenances soiled or damaged due to the CONTRACTOR'S operations must be cleaned, repaired, replaced, or restored to a condition not less than that existing immediately prior to the damage and without cost to the DEPARTMENT. Misuse or abuse of State property will be reason for action under the terms of the contract. Caster furniture will not be used as carts for transporting trashcans, etc.

2.9 CLEAN-UP

All supplies, equipment, and machines must be kept out of traffic lanes or other areas where they might be hazardous or unsightly and will be removed at the end of each work period or secured

in storage room provided for this purpose. Cloths, mops or brushes containing flammable materials must be properly disposed of or stored in approved containers.

All dirt and debris collected while cleaning shall be disposed of daily after the completion of work. Other debris must be disposed of by depositing into the appropriate trash collection container.

- 2.10 Cleaning techniques detailed in the contract are intended to assure acceptable outcomes. Alternative cleaning techniques that provide equal outcomes are acceptable to the DEPARTMENT.

2.11 SUPPLIES AND EQUIPMENT

The DEPARTMENT will supply all necessary cleaning equipment and supplies.

2.12 BUILDING SECURITY

- a. The CONTRACTOR will close and lock windows and doors and turn out lights when cleaning is completed in an area. Lights can be turned on only in areas actually being cleaned, other lights, except for exit and emergency lights, must be turned off to conserve energy.
- b. No door or window will remain unlocked. The CONTRACTOR will be responsible for all keys in their possession and will be responsible for any lost keys and costs involving the change of any locks.
- c. Only employees of the CONTRACTOR will be allowed in the buildings during work shifts. No family members, friends, or pets will be allowed access to Pine Hills Youth Correctional Facility.

2.13 INSPECTIONS AND SUPERVISION

CONTRACTOR will be required to adhere to the cleaning specifications in order to provide a clean, healthy and safe work environment for all employees. Prompt and courteous service to the DEPARTMENT is required by the CONTRACTOR to fulfill this obligation.

2.14 ENFORCEMENT

All services and workmanship in the performance of this janitorial contract will be subject to inspection by the DEPARTMENT at any time during the term of the contract. The DEPARTMENT reserves the right to inspect a work area during any twenty-four (24) hour period.

- 2.15 The DEPARTMENT shall retain the right to determine whether an adequate level of service and workmanship is being maintained.

- 2.16 Services found to be incomplete, defective or not accomplished as scheduled will be reported to the designated contact person for appropriate action. Inspection of the service area is the responsibility of the designated contract person or designee. The DEPARTMENT has the authority to point out to the CONTRACTOR any deficiencies and require corrective measures in accordance with the contract terms.

2.17 CORRECTION OF DEFICIENCIES

Daily services found to be incomplete, defective, or not accomplished as scheduled will be reported to the CONTRACTOR for immediate corrective action by the CONTRACTOR and will be acceptably completed, corrected or re-accomplished.

- 2.18 A written report of the deficiencies shall be filed and a copy given to the CONTRACTOR for the CONTRACTOR'S record and response. CONTRACTOR'S written and signed response will be made a part of the file.
- 2.19 CONTRACTOR must supply experienced janitorial supervisors. The supervisor will be responsible for instructing and training the CONTRACTOR personnel in proper and specified work methods and procedures. They will direct, schedule and coordinate all janitorial services and functions to completely accomplish the work as required by contract and as specified herein. The CONTRACTOR or a competent representative will be available Monday through Friday of each week to discuss contract issues and janitorial services.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services (or goods), provided pursuant to Section 2, in the following manner:

- A. DEPARTMENT shall pay CONTRACTOR **\$97.00** per cleaning, not to exceed ten thousand eighty eight and 00/100 Dollars (\$10,088.00) per fiscal year for the services described in Section 2 above.
- B. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect on July 1, 2007 and shall terminate on June 30, 2008, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of one (1) additional year.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

6. LIAISONS AND NOTICE

- A. Brian Engebretson, (406-233-2306), 4 North Haynes, Miles City Montana 59301, or successor serves as DEPARTMENT'S liaison.
- B. Susan Nielson, (406-234-3740), PO Box 759, Miles City Montana 59301 or successor serves as CONTRACTOR'S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Contracts and Facilities Management Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. HOLD HARMLESS AND INDEMNIFICATION

- A. CONTRACTOR agrees that he is financially responsible (liable) for any audit exceptions or other financial loss to DEPARTMENT due to the negligence, intentional acts, or failure for any reason to comply with terms of this Contract.
- B. CONTRACTOR agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of CONTRACTOR and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

10. INSURANCE

- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by DEPARTMENT. At the request of DEPARTMENT either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$500,000.00 per occurrence and \$1,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a “trade secret” as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. LICENSURE

CONTRACTOR agrees to provide copies of current licenses and certifications that register CONTRACTOR and any associates performing under this Contract.

19. ARBITRATION

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

20. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

21. SEVERABILITY

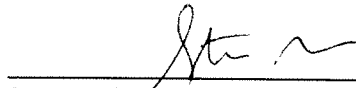
A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

22. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts and Facilities Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE


DEPARTMENT



Steve Gibson, Administrator
Youth Services Division

5-5-07
Date

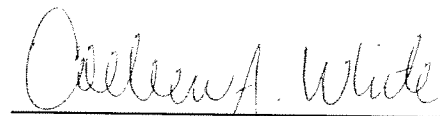
CONTRACTOR



Susan Nielson
Eastern Montana Industries

5-10-07
Date

Approved for Legal Content by:



Legal Counsel
Department of Corrections

5/2/07
Date

**CONTRACT AMENDMENT
CONTRACT #08-011-PHYCF**

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **Eastern Montana Industries** (CONTRACTOR) PO Box 759, Miles City, Montana 59301 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July 1, 2007 and Section 20 provides that the parties may modify their agreement in writing; and

WHEREAS, the Contract expires on June 30, 2008 and Section 5 provides that the parties may extend the expiration date of the Contract.

NOW THEREFORE, the parties agree to amend the Contract as follows (**new language underlined, old language interlined**):

5. TIME OF PERFORMANCE

This Contract shall take effect on July 1, 2007 and shall terminate on June 30, 2009, unless terminated earlier in accordance with the terms of this Contract. ~~This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of one (1) additional year.~~

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

This constitutes the Amendment to the Contract. All other provisions contained in the original Contract, as amended, shall remain unchanged.

DEPARTMENT



Steve Gibson, Administrator
Youth Services Division

4-21-08

Date

CONTRACTOR



Susan Nielson
Eastern Montana Industries

4-23-08

Date

Reviewed for Legal Content by:



Legal Counsel
Department of Corrections

4/17/08

Date